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23 **UNITED STATES DISTRICT COURT**
24 **CENTRAL DISTRICT OF CALIFORNIA**

25 CORAL HEAD, INC., a California
26 corporation,

27 Plaintiff,

28 vs.

AVIATOR NATION, INC., a California
corporation,

Defendant.

AND RELATED CROSS-CLAIMS.

Case No. 2:22-cv-03601 SB (JEMx)

[Assigned to The Honorable Stanley
Blumenfeld, Jr., Courtroom 6C]

**STIPULATED PROTECTIVE
ORDER**

Original Complaint Filed:
May 25, 2022

I. PURPOSES AND LIMITATIONS

A. Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section XIII(C), below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the Court to file material under seal.

II. GOOD CAUSE STATEMENT

A. This action is likely to involve trade secrets, customer and pricing lists and other valuable research, development, commercial, financial, technical and/or proprietary information for which special protection from public disclosure and from use for any purpose other than prosecution of this action is warranted. Such confidential and proprietary materials and information consist of, among other things, confidential business or financial information, information regarding confidential business practices, or other confidential research, development, or commercial information (including information implicating privacy rights of third parties), information otherwise generally unavailable to the public, or which may be privileged or otherwise protected from disclosure under state or federal statutes, court rules, case decisions, or common law. Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep

1 confidential, to ensure that the parties are permitted reasonable necessary uses of
 2 such material in preparation for and in the conduct of trial, to address their handling
 3 at the end of the litigation, and serve the ends of justice, a protective order for such
 4 information is justified in this matter. It is the intent of the parties that information
 5 will not be designated as confidential for tactical reasons and that nothing be so
 6 designated without a good faith belief that it has been maintained in a confidential,
 7 non-public manner, and there is good cause why it should not be part of the public
 8 record of this case.

9 **III. DEFINITIONS**

10 A. Action: This pending federal lawsuit, Case No. 2:22-cv-03601.

11 B. “ATTORNEYS’ EYES ONLY” information as used herein, means
 12 CONFIDENTIAL Protected Material that includes (1) current and projected
 13 business and design plans; (2) sales and financial projections; (3) financial
 14 information of the parties, including profit margins, sales and cost data, profits, and
 15 retail sales summaries, vendor lists, order summaries, confidential contracts,
 16 supplier information, pricing information; and (4) customer lists.

17 B. Challenging Party: A Party or Non-Party that challenges the
 18 designation of information or items under this Order.

19 C. “CONFIDENTIAL” Information or Items: Information (regardless of
 20 how it is generated, stored or maintained) or tangible things that qualify for
 21 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
 22 the Good Cause Statement.

23 D. Counsel: Outside Counsel of Record and House Counsel (as well as
 24 their support staff).

25 E. Designating Party: A Party or Non-Party that designates information
 26 or items that it produces in disclosures or in responses to discovery as
 27 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”
 28

1 F. Disclosure or Discovery Material: All items or information, regardless
 2 of the medium or manner in which it is generated, stored, or maintained (including,
 3 among other things, testimony, transcripts, and tangible things), that are produced or
 4 generated in disclosures or responses to discovery in this matter.

5 G. Expert: A person with specialized knowledge or experience in a matter
 6 pertinent to the litigation who has been retained by a Party or its counsel to serve as
 7 an expert witness or as a consultant in this Action.

8 H. House Counsel: Attorneys who are employees of a party to this Action.
 9 House Counsel does not include Outside Counsel of Record or any other outside
 10 counsel.

11 I. Non-Party: Any natural person, partnership, corporation, association,
 12 or other legal entity not named as a Party to this action.

13 J. Outside Counsel of Record: Attorneys who are not employees of a
 14 party to this Action but are retained to represent or advise a party to this Action and
 15 have appeared in this Action on behalf of that party or are affiliated with a law firm
 16 which has appeared on behalf of that party, and includes support staff.

17 K. Party: Any party to this Action, including all of its officers, directors,
 18 employees, consultants, retained experts, and Outside Counsel of Record (and their
 19 support staffs).

20 L. Producing Party: A Party or Non-Party that produces Disclosure or
 21 Discovery Material in this Action.

22 M. Professional Vendors: Persons or entities that provide litigation
 23 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
 24 demonstrations, and organizing, storing, or retrieving data in any form or medium)
 25 and their employees and subcontractors.

26 N. Protected Material: Any Disclosure or Discovery Material that is
 27 designated as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES
 28 ONLY.”

O. Receiving Party: A Party that receives Disclosure or Discovery Material from a Producing Party.

IV. SCOPE

A. The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

B. Any use of Protected Material at trial shall be governed by the orders of the trial judge. This Order does not govern the use of Protected Material at trial.

V. DURATION

A. Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this Action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

VI. DESIGNATING PROTECTED MATERIAL

A. Exercise of Restraint and Care in Designating Material for Protection

1. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify so that other portions of the material, documents, items, or communications for which

1 protection is not warranted are not swept unjustifiably within the ambit of this
2 Order.

3 2. Mass, indiscriminate, or routinized designations are prohibited.
4 Designations that are shown to be clearly unjustified or that have been made
5 for an improper purpose (e.g., to unnecessarily encumber the case
6 development process or to impose unnecessary expenses and burdens on other
7 parties) may expose the Designating Party to sanctions.

8 3. If it comes to a Designating Party's attention that information or
9 items that it designated for protection do not qualify for protection, that
10 Designating Party must promptly notify all other Parties that it is withdrawing
11 the inapplicable designation.

12 B. Manner and Timing of Designations

13 1. Except as otherwise provided in this Order (see, e.g., Section
14 B(2)(b) below), or as otherwise stipulated or ordered, Disclosure or Discovery
15 Material that qualifies for protection under this Order must be clearly so
16 designated before the material is disclosed or produced.

17 2. Designation in conformity with this Order requires the
18 following:

19 a. For information in documentary form (e.g., paper or
20 electronic documents, but excluding transcripts of depositions or other
21 pretrial or trial proceedings), that the Producing Party affix at a
22 minimum, the legend "CONFIDENTIAL" or "CONFIDENTIAL –
23 ATTORNEYS' EYES ONLY" (hereinafter "CONFIDENTIAL
24 legend"), to each page that contains protected material. If only a
25 portion or portions of the material on a page qualifies for protection, the
26 Producing Party also must clearly identify the protected portion(s) (e.g.,
27 by making appropriate markings in the margins).
28

1 b. A Party or Non-Party that makes original documents
2 available for inspection need not designate them for protection until
3 after the inspecting Party has indicated which documents it would like
4 copied and produced. During the inspection and before the designation,
5 all of the material made available for inspection shall be deemed
6 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES
7 ONLY.” After the inspecting Party has identified the documents it
8 wants copied and produced, the Producing Party must determine which
9 documents, or portions thereof, qualify for protection under this Order.
10 Then, before producing the specified documents, the Producing Party
11 must affix the “CONFIDENTIAL legend” to each page that contains
12 Protected Material. If only a portion or portions of the material on a
13 page qualifies for protection, the Producing Party also must clearly
14 identify the protected portion(s) (e.g., by making appropriate markings
15 in the margins).

16 c. For testimony given in depositions, that the Designating
17 Party identify the Disclosure or Discovery Material on the record,
18 before the close of the deposition all protected testimony.

19 d. For information produced in form other than document
20 and for any other tangible items, that the Producing Party affix in a
21 prominent place on the exterior of the container or containers in which
22 the information is stored the legend “CONFIDENTIAL” or
23 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion
24 or portions of the information warrants protection, the Producing Party,
25 to the extent practicable, shall identify the protected portion(s).

26 C. Inadvertent Failure to Designate

27 1. If timely corrected, an inadvertent failure to designate qualified
28 information or items does not, standing alone, waive the Designating Party’s

1 right to secure protection under this Order for such material. Upon timely
 2 correction of a designation, the Receiving Party must make reasonable efforts
 3 to assure that the material is treated in accordance with the provisions of this
 4 Order.

5 **VII. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

6 **A. Timing of Challenges**

7 1. Any party or Non-Party may challenge a designation of
 8 confidentiality at any time that is consistent with the Court's Scheduling
 9 Order.

10 **B. Meet and Confer**

11 1. The Challenging Party shall initiate the dispute resolution
 12 process under Local Rule 37-1 et seq.

13 C. The burden of persuasion in any such challenge proceeding shall be on
 14 the Designating Party. Frivolous challenges, and those made for an improper
 15 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
 16 parties) may expose the Challenging Party to sanctions. Unless the Designating
 17 Party has waived or withdrawn the confidentiality designation, all parties shall
 18 continue to afford the material in question the level of protection to which it is
 19 entitled under the Producing Party's designation until the Court rules on the
 20 challenge.

21 **VIII. ACCESS TO AND USE OF PROTECTED MATERIAL**

22 **A. Basic Principles**

23 1. A Receiving Party may use Protected Material that is disclosed
 24 or produced by another Party or by a Non-Party in connection with this Action
 25 only for prosecuting, defending, or attempting to settle this Action. Such
 26 Protected Material may be disclosed only to the categories of persons and
 27 under the conditions described in this Order. When the Action has been
 28

1 terminated, a Receiving Party must comply with the provisions of Section
2 XIV below.

3 2. Protected Material must be stored and maintained by a Receiving
4 Party at a location and in a secure manner that ensures that access is limited
5 to the persons authorized under this Order.

6 B. Disclosure of “CONFIDENTIAL” Information or Items

7 1. Unless otherwise ordered by the Court or permitted in writing by
8 the Designating Party, a Receiving Party may disclose any information or item
9 designated “CONFIDENTIAL” only to:

10 a. The Receiving Party’s Outside Counsel of Record in this
11 Action, as well as employees of said Outside Counsel of Record to
12 whom it is reasonably necessary to disclose the information for this
13 Action;

14 b. The officers, directors, and employees (including House
15 Counsel) of the Receiving Party to whom disclosure is reasonably
16 necessary for this Action;

17 c. Experts (as defined in this Order) of the Receiving Party
18 to whom disclosure is reasonably necessary for this Action and who
19 have signed the “Acknowledgment and Agreement to Be Bound”
20 (Exhibit A);

21 d. The Court and its personnel;

22 e. Court reporters and their staff;

23 f. Professional jury or trial consultants, mock jurors, and
24 Professional Vendors to whom disclosure is reasonably necessary or
25 this Action and who have signed the “Acknowledgment and Agreement
26 to be Bound” attached as Exhibit A hereto;

g. The author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

h. During their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (i) the deposing party requests that the witness sign the “Acknowledgment and Agreement to Be Bound;” and (ii) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound,” unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

i. Any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

2. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL – ATTORNEY’S EYES ONLY” only to:

a. Those identified in paragraphs VIII.B.1(a) and (c) through (i).

IX. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

A. If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” that Party must:

1 1. Promptly notify in writing the Designating Party. Such
2 notification shall include a copy of the subpoena or court order;

3 2. Promptly notify in writing the party who caused the subpoena or
4 order to issue in the other litigation that some or all of the material covered by
5 the subpoena or order is subject to this Protective Order. Such notification
6 shall include a copy of this Stipulated Protective Order; and

7 3. Cooperate with respect to all reasonable procedures sought to be
8 pursued by the Designating Party whose Protected Material may be affected.

9 B. If the Designating Party timely seeks a protective order, the Party
10 served with the subpoena or court order shall not produce any information
11 designated in this action as “CONFIDENTIAL” or “CONFIDENTIAL –
12 ATTORNEY’S EYES ONLY” before a determination by the Court from which the
13 subpoena or order issued, unless the Party has obtained the Designating Party’s
14 permission. The Designating Party shall bear the burden and expense of seeking
15 protection in that court of its confidential material and nothing in these provisions
16 should be construed as authorizing or encouraging a Receiving Party in this Action
17 to disobey a lawful directive from another court.

18 **X. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
19 **PRODUCED IN THIS LITIGATION**

20 A. The terms of this Order are applicable to information produced by a
21 Non-Party in this Action and designated as “CONFIDENTIAL” or
22 “CONFIDENTIAL – ATTORNEY’S EYES ONLY.” Such information produced
23 by Non-Parties in connection with this litigation is protected by the remedies and
24 relief provided by this Order. Nothing in these provisions should be construed as
25 prohibiting a Non-Party from seeking additional protections.

26 B. In the event that a Party is required, by a valid discovery request, to
27 produce a Non-Party’s confidential information in its possession, and the Party is
28

1 subject to an agreement with the Non-Party not to produce the Non-Party's
2 confidential information, then the Party shall:

3 1. Promptly notify in writing the Requesting Party and the Non-
4 Party that some or all of the information requested is subject to a
5 confidentiality agreement with a Non-Party;

6 2. Promptly provide the Non-Party with a copy of the Stipulated
7 Protective Order in this Action, the relevant discovery request(s), and a
8 reasonably specific description of the information requested; and

9 3. Make the information requested available for inspection by the
10 Non-Party, if requested.

11 C. If the Non-Party fails to seek a protective order from this court within
12 14 days of receiving the notice and accompanying information, the Receiving Party
13 may produce the Non-Party's confidential information responsive to the discovery
14 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
15 not produce any information in its possession or control that is subject to the
16 confidentiality agreement with the Non-Party before a determination by the court.
17 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
18 of seeking protection in this court of its Protected Material.

19 **XI. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

20 A. If a Receiving Party learns that, by inadvertence or otherwise, it has
21 disclosed Protected Material to any person or in any circumstance not authorized
22 under this Stipulated Protective Order, the Receiving Party must immediately (1)
23 notify in writing the Designating Party of the unauthorized disclosures, (2) use its
24 best efforts to retrieve all unauthorized copies of the Protected Material, (3) inform
25 the person or persons to whom unauthorized disclosures were made of all the terms
26 of this Order, and (4) request such person or persons to execute the
27 "Acknowledgment and Agreement to be Bound" that is attached hereto as Exhibit
28 A.

XII. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

A. When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the Stipulated Protective Order submitted to the Court.

XIII. MISCELLANEOUS

A. Right to Further Relief

1. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

B. Right to Assert Other Objections

1. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

C. Filing Protected Material

1. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party's request to file Protected Material under

1 seal is denied by the Court, then the Receiving Party may file the information
2 in the public record unless otherwise instructed by the Court.

3 **XIV. FINAL DISPOSITION**

4 A. After the final disposition of this Action, as defined in Section V, within
5 sixty (60) days of a written request by the Designating Party, each Receiving Party
6 must return all Protected Material to the Producing Party or destroy such material.
7 As used in this subdivision, “all Protected Material” includes all copies, abstracts,
8 compilations, summaries, and any other format reproducing or capturing any of the
9 Protected Material. Whether the Protected Material is returned or destroyed, the
10 Receiving Party must submit a written certification to the Producing Party (and, if
11 not the same person or entity, to the Designating Party) by the 60 day deadline that
12 (1) identifies (by category, where appropriate) all the Protected Material that was
13 returned or destroyed and (2) affirms that the Receiving Party has not retained any
14 copies, abstracts, compilations, summaries or any other format reproducing or
15 capturing any of the Protected Material. Notwithstanding this provision, Counsel
16 are entitled to retain an archival copy of all pleadings, motion papers, trial,
17 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
18 and trial exhibits, expert reports, attorney work product, and consultant and expert
19 work product, even if such materials contain Protected Material. Any such archival
20 copies that contain or constitute Protected Material remain subject to this Protective
21 Order as set forth in Section V.

22 B. Any violation of this Order may be punished by any and all appropriate
23 measures including, without limitation, contempt proceedings and/or monetary
24 sanctions.

RUSS, AUGUST & KABAT

1 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

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3
4 Dated: 09/07/2022

/s/ Nathan D. Meyer

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13 Dated: 09/07/2022

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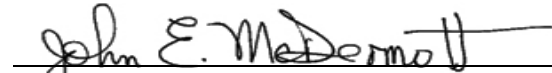
Attorneys for Defendant and

Counterclaimant

Aviator Nation, Inc.

22 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

23
24 Dated: 9/9/22



The Honorable John E. McDermott

United States Magistrate Judge

EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [print or type full name], of _____
 _____ [print or type full address], declare
 under penalty of perjury that I have read in its entirety and understand the Stipulated
 Protective Order that was issue by the United States District Court for the Central
 District of California on _____ [date] in the case of _____
 _____ [insert formal name of the case and the number and initials assigned to
 it by the Court]. I agree to comply with and to be bound by all the terms of this
 Stipulated Protective Order and I understand and acknowledge that failure to so
 comply could expose me to sanctions and punishment in the nature of contempt. I
 solemnly promise that I will not disclose in any manner any information or item that
 is subject to this Stipulated Protective Order to any person or entity except in strict
 compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
 for the Central District of California for the purpose of enforcing the terms of this
 Stipulated Protective Order, even if such enforcement proceedings occur after
 termination of this action. I hereby appoint _____ [print or
 type full name] of _____ [print
 or type full address and telephone number] as my California agent for service of
 process in connection with this action or any proceedings related to enforcement of
 this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed Name: _____

Signature: _____

CERTIFICATE OF SERVICE

I certify that counsel of record who are deemed to have consented to electronic service are being served on September 9, 2022, with a copy of this document via the Court's CM/ECF systems. Any other counsel will be served by electronic mail, facsimile, overnight delivery and/or First Class Mail on this date.

/s/ Nathan D. Meyer

Nathan D. Meyer

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